

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
OF THE STATE OF WASHINGTON

MT. HOMES, INCORPORATED,	)	
	)	
Appellant,	)	PCHB No. 88-112
	)	
v.	)	FINAL FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
PUGET SOUND AIR POLLUTION	)	AND ORDER
CONTROL AGENCY,	)	
	)	
Respondent.	)	

This matter, the appeal of a Notice and Order of Civil Penalty (No. 6863) for allegedly causing or allowing an outdoor fire containing prohibited materials, came on for formal hearing before the Pollution Control Hearings Board, Wick Dufford (presiding) and Judith A. Bendor, on December 7, 1988, at Seattle, Washington.

Appellant appeared by its President, Richard Seubert. Respondent Puget Sound Air Pollution Control Agency (PSAPCA) was represented by its attorney Keith McGoffin. The proceedings were reported by Cheri Davidson of Eugene Barker and Associates.

Witnesses were sworn and testified. Exhibits were examined. From the testimony heard and exhibits examined, the Board makes these

FINDINGS OF FACT

I

Respondent PSAPCA is an activated air pollution control authority under Chapter 70.94 RCW, the Washington Clean Air Act, with the

1 responsibility for carrying out a program of air pollution prevention  
2 and control in a multi-county area, including the site of the incident  
3 in question in North Bend, Washington.

4 II

5 Appellant Mt. Homes, Inc., is a building contractor located in  
6 North Bend, Washington.

7 III

8 On June 6, 1988, at about 11:00 a.m., PSAPCA's inspector, while  
9 on routine patrol, observed smoke from an apartment house construction  
10 site located between the North Bend business district and the I-90  
11 freeway.

12 On approaching the scene, he found two small outdoor fires in  
13 progress. They contained construction debris, including scrap wood,  
14 pieces of plywood, cardboard, caulking containers, and plastic. The  
15 fires were attended by Rich Seubert of Mt. Homes, Inc. Mr. Seubert  
16 had no fire permit from the local fire department.

17 IV

18 Mr. Seubert, in the course of the apartment house project, had  
19 hauled numerous loads of scrap material to the dump. Nearing the end  
20 of the job, he decided to burn the last few remaining items of debris  
21 and did so. He told the inspector he thought that it was legal to  
22 burn untreated wood, though he acknowledged that burning plastic is  
23 illegal.

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26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER  
PCHB No. 88-112

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V

Mr. Homes, Inc. was issued a Notice of Violation by PSAPCA in 1985 in relation to the alleged burning of an unlawful outdoor fire on August 7, 1985. No penalty was assessed and no further enforcement action was taken.

No proof was made of the facts underlying this incident beyond the fact of the Notice itself. However, the Notice recites that a copy of PSAPCA's regulations on outdoor fires was enclosed.

VI

PSAPCA's inspector issued a Notice of Violation to Seubert on June 6, 1988, citing a violation of PSAPCA Regulation I, Section 8.02(3). Subsequently on July 22, 1988, the agency issued Notice and Order of Civil Penalty No. 6863 in relation to the incident, assessing a fine of \$1,000. On August 3, 1988, Mt. Homes, Inc. appealed to this Board.

VII

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the issues and parties. Chapters 43.21B and 70.94 RCW.

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II

PSAPCA Regulation I, Section 8.02(3) reads:

It shall be unlawful for any person to cause or allow any outdoor fire:

(3) containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics or any other substance other than natural vegetation which normally emits dense smoke or obnoxious odors.

This provision of the regulations essentially restates the explicit terms of the underlying statute. RCW 70.94.775.

III

PSAPCA interprets its regulations to prohibit the burning of all construction debris, even if the burning is of untreated wood. Regulation I is not clear on this point. If the agency views untreated wood as a "substance other than natural vegetation which normally emits dense smoke," it would be an easy task to say so explicitly.

However, in any event, PSAPCA's rules clearly require a permit from the agency Control Officer for any outdoor burning other than residential or land clearing burning. Regulation I, Section 8.05.

In the instant case, the fires contained expressly forbidden material, not just untreated wood. In addition, no permit of any kind was obtained for the burning.

IV

We conclude that Mt. Homes, Inc. violated PSAPCA's outdoor

1 burning regulations on June 6, 1988. The fires contained prohibited  
2 materials.

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4 V

5 The Washington Clean Air Act is a strict liability statute and,  
6 therefore, a violator's state of mind or intentions are irrelevant to  
7 the question of liability.

8 RCW 70.94.431(1) authorizes the imposition of a civil penalty for  
9 violation of the Act or its implementing regulations "in an amount not  
10 to exceed one thousand dollars per day for each violation."

11 VI

12 The penalty was assessed at the statutory maximum here in large  
13 part because of what the agency views as Mt. Homes' past history of  
14 violation. However, the one prior incident, over three years ago,  
15 involved no adjudication of wrongdoing, nor any admission of the  
16 same. The relevant facts were not proven. Under the circumstances,  
17 we give little weight to the past record of the violator in evaluating  
18 the amount of penalty.

19 We are, however, dubious of Mt. Homes' protestations of  
20 unfamiliarity with PSAPCA's outdoor burning rules. While the text is  
21 not a model of clarity in all respects, these rules have been in force  
22 since 1976, and the agency's interpretation of them has been the same  
23 since the outset. The building construction industry in particular  
24 has been extensively regulated under these rules.

25 Moreover, the mailing of a prior Notice of Violation, whatever

1 the underlying facts, should have put Mt. Homes on notice sufficient  
2 to require inquiry of the agency before burning.

3 Furthermore, we are unmoved by the argument that other  
4 contractors frequently engage in illegal burning. Our experience on  
5 this Board is of a vigorous enforcement effort. If everyone else does  
6 it, they do it at considerable risk of apprehension and substantial  
7 fine.

#### 8 VII

9 The purpose of the civil penalty is not primarily retribution,  
10 but rather to influence behavior, both of the perpetrators and of the  
11 public at large.

12 Here both the fires and the amount of prohibited material were  
13 small. Under all the facts and circumstances, including the need to  
14 promote compliance among members of the public generally, we believe  
15 the Order set forth below is appropriate.

#### 16 VIII

17 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
18 adopted as such.

19 From these Conclusions of Law the Board enters this  
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ORDER

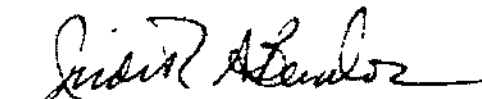
Notice and Order of Civil Penalty, No. 6863, is affirmed, except that \$500 of the penalty is suspended on the condition that appellant does not violate PSAPCA's rules for two years from the date of this decision.

DONE this 15<sup>th</sup> day of December, 1988.

POLLUTION CONTROL HEARINGS BOARD



WICK DUFFORD, Presiding



JUDITH A. BENDOR, Member